

## MOTION TO CONSOLIDATE.

MAY IT PLEASE THE COURT:

This case arises out of the same fact situation and involves the same legal questions as *The People of the State of Illinois, ex rel. Reconstruction Finance Corporation, et al. v. Board of Education of the City of Chicago, et al.*, this day filed, and these petitioners move that this case be consolidated with that case for hearing and decision.

Respectfully submitted,

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SEP 9 1944

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, A. D. 1944

**No. 332**

IRVING K. HUTCHINSON, et al.,  
*Petitioners,*

*vs.*

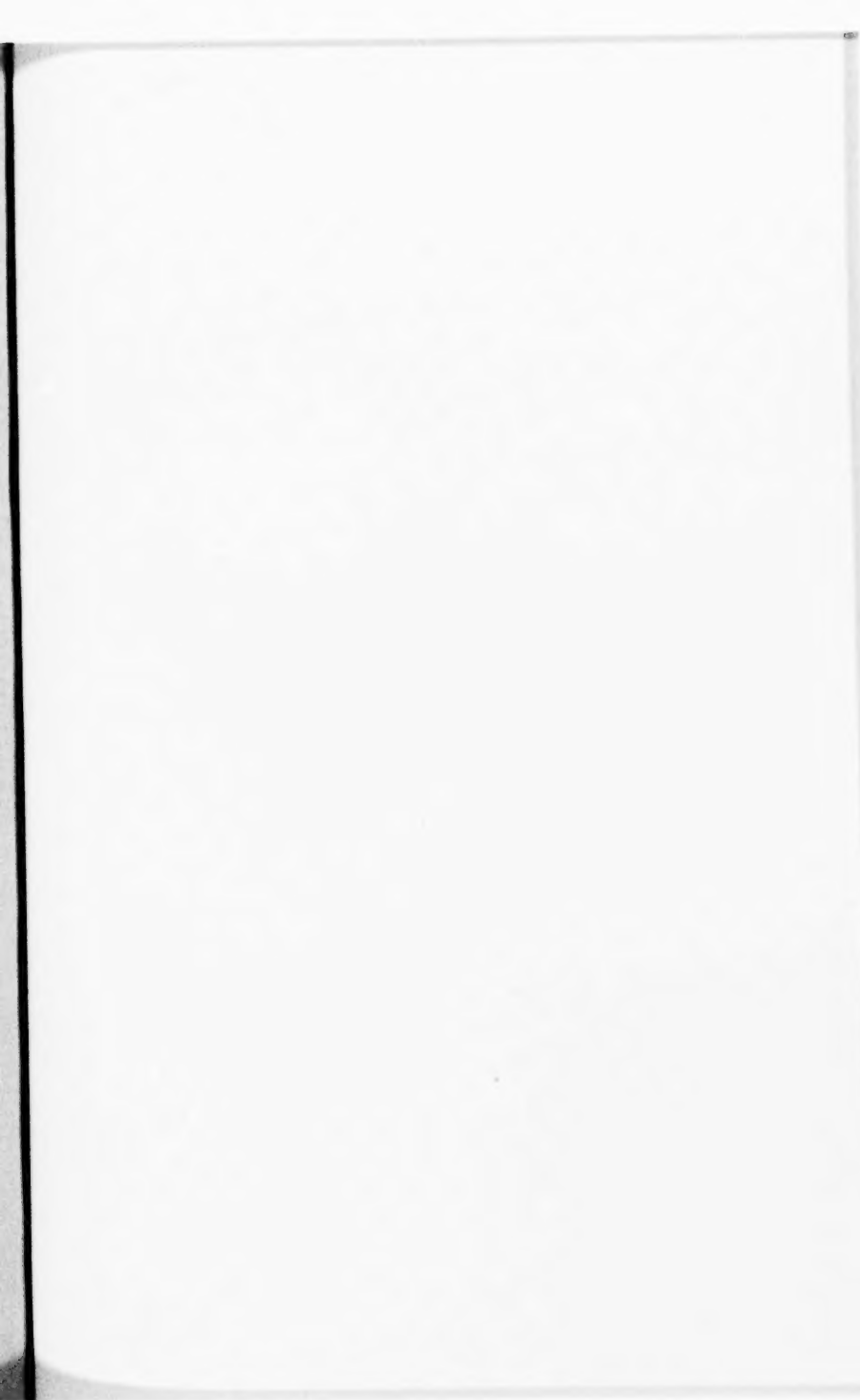
BOARD OF EDUCATION OF THE CITY OF  
CHICAGO,  
*Respondent.*

**STATEMENT BY RESPONDENT OF MATTERS  
AND GROUNDS MAKING AGAINST THE JURIS-  
DICTION OF THE SUPREME COURT OF THE  
UNITED STATES.**

RICHARD S. FOLSOM,  
FRANK S. RIGHEIMER,  
*Attorneys for Respondent.*

*Of Counsel,*  
FRANK R. SCHNEBERGER,  
JAMES W. COFFEY,





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*vs.*

BOARD OF EDUCATION OF THE CITY OF  
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**STATEMENT BY RESPONDENT OF MATTERS  
AND GROUNDS MAKING AGAINST THE JURIS-  
DICTION OF THE SUPREME COURT OF THE  
UNITED STATES.**

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MAY IT PLEASE THE COURT:

Respondent, Board of Education of the City of Chicago, a body politic and corporate, respectfully presents to the court the following matters and grounds making against the jurisdiction of the Supreme Court of the United States of the petition of Irving K. Hutchinson and 211 other judgment creditors of the respondent for a writ of certiorari directing the

Supreme Court of Illinois to certify to this court the record in the case of *Irving K. Hutchinson, et al. v. Board of Education of the City of Chicago*, No. 27490 in that court.

## STATEMENT OF THE CASE

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The proceeding with reference to which certiorari is sought was an appeal to the State Supreme Court by the Board of Education from an order entered in *Hutchinson, et al. v. Board of Education* by the Circuit Court of Cook County, Illinois, denying the motion of the defendant, Board of Education of the City of Chicago, to vacate the decree and judgments theretofore entered against the board. (R. 182) The decree and judgments were entered on April 15, 1938 (R. 133-176), the motion of the board to vacate the judgments was filed on November 19, 1942 (R. 176-182) and denied on June 7, 1943. (R. 182) No pleadings were filed by the plaintiffs in that case to said motion of the Board.

The sole question involved on the appeal was the correctness of the Circuit Court's ruling in denying the motion of the Board to vacate the decree and judgments. No demand of the plaintiffs in that case for enforcement of the decree and judgments was involved or before the court. Their sole interest in that case was the denial of the Board's motion to vacate their judgments.

The State Supreme Court, on March 21, 1944, entered an order dismissing the Board's appeal and awarding the appellees (petitioners here) their costs. (R. 197)

## ARGUMENT

## I.

**A party successful in the State Court cannot maintain a petition for certiorari to review the judgment in his favor.**

Petitioners cite no cases to support their contention that this court has jurisdiction to review the determination of the case by the State Supreme Court.

The record in this case discloses that the Board of Education was the appellant seeking to reverse an order entered by the Circuit Court of Cook County, Illinois, denying its motion to vacate the judgments entered against it in said cause. The appellees (petitioners here) were seeking to sustain the order of the Circuit Court. They sought no affirmative relief. When the Supreme Court of the State of Illinois dismissed the Board's appeal, the decree and judgments of the Circuit Court remained unchanged, the order on the motion to vacate remained unchanged and the petitioners here were the successful parties.

Under the decisions of this court a successful party cannot ask for a review of the cause by certiorari. (*Lindheimer v. Illinois Bell Tel. Co.*, 292 U. S. 151, 176; *N. Y. Tel. Co. v. Maltbie*, 291 U. S. 645; *Lewis v. United States*, 216 U. S. 611, 613; *Anglo-American Prov. Co. v. Davis Prov. Co.*, 191 U. S. 376, 377; *New Orleans v. Emsheimer*, 181 U. S. 153, 154; *Public Service Com. v. Bashear Freight Lines*, 306 U. S. 204, 206-207.)



Respondent submits therefore that the petition for certiorari should be denied.

Respectfully submitted,

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